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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/697,364 | 10/30/2003 | David Wayne Gregg | 65936 | 7901 |

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EXAMINER

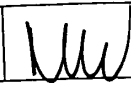
ADDIE, RAYMOND W

| ART UNIT | PAPER NUMBER |
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3671

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|---|
| Office Action Summary | Application No. 10/697,364 | Applicant(s) GREGG, DAVID WAYNE | |
| | Examiner Raymond W. Addie | Art Unit 3671 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-13 and 15-45 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-7,9-13 and 15-45 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 43-45 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 39-42. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

In this case; although there is a slight difference in the wording of the cited claims, both sets of claims define the same exact scope of method being claimed, to the extent that should one perform each method being claimed, that person would in fact perform the exact same method steps to perform the exact same method.

Note to Applicant: Claims 1, 19 require "at least one conduit for providing fluid to the roller", whereas Claims 5, 23 requires "a fluid source in communication with the at least one conduit". The cited recitations from Claims 5, 23 does not define the scope of what

constitutes "a fluid source". Because this language is vague, a clear understanding of the scope of what constitutes "a fluid source" would require extensive consideration of the specification in order to define the scope of "a fluid source". Rather, for expediency, and to permit the broadest possible scope of the claimed limitation, Claims 5, 23; being provided the broadest reasonable interpretation of the claim, is seen as only to require -a quantity of fluid, in communication with the at least one conduit--.

Claim Objections

2. Claim 31 is objected to because of the following informalities:

In. 1 recites "the holders"; which should be --the at least one holder--; which is explicitly stated in Claim 29 from which Claim 31 depends.

Claim 31 appears to have been amended to require multiple holders, whereas claim 29 only provides for "at least one holder".

If it is Applicant's intent to claim multiple "holders"; then "claim 31 should recite --the at least one holder includes (more than one/multiple/a pair of holders) for holding removable weights--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 9, 12, 13, 15, 17, 19, 23, 26, 29-32, 34, 36-45 are rejected under 35 U.S.C.

103(a) as being unpatentable over Jones # 5,022,783 in view of Wynings # 6,585,451

Jones discloses a concrete stamping device (10) comprising:

A fluid delivery system including a source of water, and a conduit (14), in

communication with the water source, to wash concrete from the surface of the stamp; and a plurality of spray nozzles (14a), for washing concrete away from the stamping surface.

A roller drum (18) including a surface (26), defined by a layer of material (19/19a)

defining a stamp impression for forming a pattern.

A receiver portion (13) for receiving the roller drum (18) in a rotatable engagement.

What Jones does not disclose is the use of dead weights to increase the stamping force of the roller drum.

However, Wynings teaches a roller drum assembly comprising at least one roller (12, 14) in rotatable engagement with a receiver portion (16), wherein the receiver portion advantageously includes at least one bar member (38) having opposing ends,

extending at least proximate to the ends of the rollers (12, 14).

Said bar (38) being configured for weighting the roller with an upright, holder-element, such as a flange, for holding removable weights (40) at each of the oppositely disposed ends of the bar member (38).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the concrete stamping apparatus of Jones, with a receiver portion configured for weighting the roller, as taught by Wynings, in order to customize the stamp impressing force of the stamping assembly. See Jones Col. 3, Ins. 46-Col. 4, In. 65. See Wynings Figs. 1, 3; Col. 2, In. 64-col. 4, In. 10.

In regards to claims 30-32 Jones discloses the receiver portion (16) includes a cross-bar (38) in communication with lateral members (16), and further includes a holder at each of the opposing ends of the cross-bar (38).

In regards to Claims 36-45 Jones discloses a method for stamping concrete comprising: Providing a stamping apparatus including, a roller (18) including a stamping surface; a receiver portion (16) in rotatable engagement with said roller (18) and having opposing ends; a fluid transport system including at least one conduit (14) for providing release fluid the roller along the surface.

Moving the apparatus over a mass of concrete being worked in order to impart a pattern defined by the stamp.

Activating the fluid transport system for releasing fluid onto the surface of the roller.

What Jones does not disclose is weighting the apparatus to increase the compacting force of the roller.

However, Wynings teaches a method of customizing the compaction force of a roller drum assembly comprising at least one roller (12, 14) in rotatable engagement with a receiver portion (16), wherein the receiver portion advantageously includes at least one bar member (38) having opposing ends, extending at least proximate to the ends of the rollers (12, 14). Wherein the method comprises the steps of:

Configuring the cross-bar (38) for weighting the roller with an upright, holder-element, such as a flange, for holding removable weights (40) at each of the oppositely disposed ends of the bar member (38).

Adding weights (40) to at least one of the oppositely disposed ends of the receiver portion (16).

Removing at least a portion of the added weight off of at least one of the oppositely disposed ends of the receiver (16).

Alternatively not adding and not removing weights from the receiver portion.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide method of concrete stamping apparatus of Jones, with a

method for weighting compaction roller, as taught by Wynings, in order to customize the stamp impressing force of the stamping assembly. See Jones Col. 3, Ins. 46-Col. 4, In. 65. See Wynings Figs. 1, 3; Col. 2, In. 64-col. 4, In. 10.

4. Claims 2-4, 6-7, 10, 16, 18, 20-22, 24, 25, 27, 33, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones '783 in view of Wynings '451 as applied to claims 1, 19 above, and further in view of Ziegler et al. # 5,846,176. Jones in view of Wynings discloses a concrete stamping apparatus, with removable weights and a fluid release system including at least one conduit (14) and a plurality of spray nozzles (14a). What Jones in view of Wynings do not disclose is how the fluid is caused to be sprayed onto the roller body (18). However, Ziegler et al. teaches it is known to provide a compacting roller (10) with a roller irrigation system that helps to prevent the accumulation of concrete debris on the roller body (12). Said irrigation system comprising: A removable tank/bottle (28) constituting a fluid source, mounted on a handle (24), distant and above the height of the roller body (12), the handle defining a housing for the at least one conduit (32). Said conduit (32) including at least one sub-line (34) on its end the at least one sub-line configured for extending at least to the receiver portion for providing fluid to the roller along the surface of said roller body (12); an activatable mechanism (such as a finger trigger) for discharging fluid from the at least one conduit (32) and being in communication with the at least one conduit.

Wherein, the at least one sub-line (34) includes 2 sub-lines (34) each extending parallel to and above said roller body (12). Said sub-lines extending in opposite directions to one another, from a valve (33), in order to prevent accumulation of concrete debris on the roller body (12).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the concrete stamping apparatus of Jones in view of Wynings with a roller irrigation system, as taught by Zieger et al., in order to selectively spray water onto the concrete stamping roller.

In regards to Claims 10, 18, 27, 35 Jones discloses "parts of the invention, to include variations in sized, materials, shape, form, function and manner of operation...are readily apparent and obvious to one skilled in the art. Further Jones discloses that changes in the surface members (19) can be made to define a desired concrete stamping impression.

Further, Zieger et al. teaches concrete stamping rollers are advantageously provided with a rubber sheet material having a plurality of protrusions (14) capable of forming random texturing in freshly-poured concrete. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the concrete stamping tool of Jones in view of Wynings with a roller having a concrete texturing material, as taught by Zieger et al., in order to improve traction during rain events. See Zieger et al., Col. 3, ln. 50-col. 4, ln. 54.

5. Claims 11, 18, 28, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones '783 in view of Wynings '451 as applied to claims 1, 19 above, and further in view Brimo # 4,776,723.

Jones '783 in view of Wynings discloses a concrete stamping tool including a stamping surface (19) that can be varied in size, shape and form; but does not disclose a concrete stamping tool having a pattern and a texture forming surface. However, Brimo teaches a concrete stamping tool (50) can have inner and outer blades (52, 54) for providing a desired pattern (such as herringbone bricks) to a soft concrete surface, and that the flat portion (56) of the tool (50), between the blades (52, 54) can be provided with a pattern, specifically to "produce simulated texture of the material being simulated in concrete". See col. 4, lns. 15-46. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the concrete stamping device of Jones '783 in view of Wynings with a pattern and texture forming device, as taught by Brimo, in order to increase the aesthetic appearance of the concrete being stamped.

In regards to Claims 18, 35 Jones '783 in view of Wynings discloses a concrete stamping tool including a stamping surface (19) that can be varied in size, shape and materials; but does not disclose a concrete stamping tool but does not specifically disclose the use of Urethane Rubber.

However, Brimo teaches that concrete stamping device are advantageously formed from urethane rubber, to provide flexibility to the stamping device. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to make the concrete stamping device of discloses a concrete stamping tool including a stamping surface (19) that can be varied in size, shape and form; but does not disclose a concrete stamping tool., from urethane rubber, as taught by Brimo, in order to facilitate various goals, as explicitly taught by Brimo, see col. 6, lns. 7-21.

Response to Arguments

6. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection.

Although several originally cited references have been reused in the New Grounds of Rejection put forth above, the arguments are so heavily directed to allegations the rejections of the Last Office Action do not satisfy the Newly Amended claim language; it is not possible to rebut arguments made moot by Applicant's amendment and the New Grounds of Rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2PM, 6-8PM.

Application/Control Number: 10/697,364
Art Unit: 3671

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas Will
Supervisory Patent Examiner
Group 3600

12/22/04